

Webster Zoning Board of Appeals
Meeting Minutes – May 25, 2021

A meeting of the Webster Zoning Board of Appeals was held on May 25, 2021 via remote participation Zoom meeting in accordance with Governor Baker's Emergency Acts of 2020.

Present: Chairman Jason Piader, Vice Chairman Dan Cournoyer, Clerk Chris Daggett, Members Dan Fales and Mark Mason.

Also Present: Ann Morgan, Director of Planning & Economic Development; Webster Special Town Counsel Attorney Jason Talerman, Talerman Mead & Costa.

- 1. Call to Order:** Chairman Piader called the meeting to order at 6:00 p.m. The Chairman read the meeting notice from the agenda regarding the Governor's order about remote participation and the number of people who can convene at the public meeting at one time. Meeting protocols were reviewed. It was noted that anyone wishing to record the meeting for their own use must notify the Chairman in advance. Mr. Piader asked if anyone wished to do so. No one requested to do so. The Chairman directed staff to take attendance of the Board by roll call: Fales - Present; Mason - Present; Cournoyer - Present; Daggett - Present; Piader - Present.

2. Action Items

a. Approval of Meeting Minutes

Draft Meeting Minutes of February 17, 2021 - Mr. Piader asked if the Board had any edits. There were none. Motion to approved the minutes of February 17, 2021 as drafted made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously, 5-0 by roll call vote (Fales - yes; Cournoyer - yes; Daggett - yes; Mason - yes; Piader - yes).

Draft Meeting Minutes of March 16, 2021 - Mr. Piader asked if the Board had any edits. There were none. Motion to approved the minutes of March 16, 2021 as drafted made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously, 5-0 by roll call vote (Fales - yes; Cournoyer - yes; Daggett - yes; Mason - yes; Piader - yes).

Draft Meeting Minutes of April 18, 2021 - Mr. Piader asked if the Board had any edits. There were none. Motion to approved the minutes of April 28, 2021 as drafted made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously, 5-0 by roll call vote (Fales - yes; Cournoyer - yes; Daggett - yes; Mason - yes; Piader - yes).

- b. Draft Decision - Variance Application – 153 Gore Road – Broad Brook Development, LLC (Applicant / Owner); Request for side yard setback and lot size dimensional relief to divide one vacant lot into three house lots.**

The Board reviewed the draft decision and made the following findings:

Findings F1 through F9. Ms. Morgan noted that Finding F8 was incomplete and that Department comments received would be added. Motion to approve Findings F1 through F9 as drafted and to edit Finding F8 to include Department comments made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously 4-0 by roll call vote (Mason - AYE; Cournoyer - AYE; Daggett - AYE; Piader - AYE).

Finding F10. The Board finds that Applicant demonstrated that there were unique site conditions, specifically the topography. The significant slope at the rear of the proposed lots would force future structures closer to the road. Motion to find that the Applicant has demonstrated that there are unique site conditions made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously 4-0 (by roll call vote: Mr. Daggett — AYE; Mr. Cournoyer — AYE; Mr. Mason — AYE; Mr. Piader — AYE).

Finding F11. The Board further finds that the Applicant demonstrated hardship based on site conditions (see FINDING F10). Additional hardship is present in that, if the lot were not divided, placing a large residential structure would not be financially feasible given the location and surrounding neighborhood. Two residential structures would scale more appropriately to the neighborhood. Motion to find that the Applicant has demonstrated hardship made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously 4-0 (by roll call vote: Mr. Daggett — AYE; Mr. Cournoyer — AYE; Mr. Mason — AYE; Mr. Piader — AYE).

Finding F12. The Board further finds that the proposed division of the lot and the requested side yard setback variance requests do not present a substantial detriment to the public good. Development of two single family houses would not create excessive noise, dust, overcrowding of the land or impact adequate light and air. Single family houses are the predominate use in the area and the zoning district. Motion to find that there is not substantial detriment to the public good made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously 4-0 (by roll call vote: Mr. Daggett — AYE; Mr. Cournoyer — AYE; Mr. Mason — AYE; Mr. Piader — AYE).

Finding F13. The Board further finds that the proposed division of the lot and the requested side yard setback variance requests do not nullify or substantially derogate from the intent and purpose of the Zoning By-law. Single family houses are the predominate use in the area and the zoning district and is an allowed use in the Gore Business District. Motion to find that the proposed division of the lot and the requested side yard setback variance requests do not nullify or substantially derogate from the intent and purpose of the Zoning By-law made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously 4-0 (by roll call vote: Mr. Daggett — AYE; Mr. Cournoyer — AYE; Mr. Mason — AYE; Mr. Piader — AYE).

Decision and Conditions. The Board reviewed the draft conditions. Ms. Morgan noted that Condition 1 required additional language specifying the total number of lots as depicted in Exhibit #7. No additional edits were made. Motion to **GRANT the VARIANCE with CONDITIONS** as drafted and edited to include the number of approved lots in Condition 1 made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 4-0 (by roll call vote: Mr. Daggett — AYE; Mr. Cournoyer — AYE; Mr. Mason — AYE; Mr. Piader — AYE).

Mr. Piader noted that the Board would proceed with the public hearings and reviewed the procedural rules. Applicants would be allowed to speak first, the Board would ask questions and then the Board would take public comments. All questions are to be directed through the Chairman. The Applicant will be allowed to make a final statement before the close of the hearing.

3. Public Hearings

- a. **Special Permit Application - Expansion of pre-existing, non-conforming side yard setback requirements; 70 Bates Point Road; Hadeer Shaikhly (Applicant / Owner); Assessor ID 50-A-37-0. Property is located within the Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts. Continued from April 28, 2021.**

Mr. Piader noted that this hearing was continued from April 28th. At that time, a question regarding the setback requirement was raised. Mr. Piader asked if Ms. Morgan and Mr. Tetreault, the Building Commissioner and Zoning Enforcement Officer, reviewed that matter since the April 28th meeting, to which the answer was yes. Ms. Morgan displayed the staff report on the screen for all to see and reviewed it with the Board. Photos and maps were presented. She noted that the Applicant's engineer was made aware that the plan exceeds the allowable amount of pervious lot coverage which requires a Special Permit from the Planning Board. Lesley Wilson, engineer for the Owner stated that they understood that.

Ms. Morgan reviewed Section 650-21.C which is specific to the Lake Residential (LR) zoning district which establishes a minimum front yard setback based on the average setbacks within 300 feet of a property. An analysis of the abutting properties within 300 feet of the site was presented showing all addresses and the setbacks of the nearest structures to the front lot lines. The calculation was presented which resulted in a minimum of 46.19 foot setback in which the proposed structure can be located. Neighborhood and aerial photos were reviewed. The abutting property owner invited staff to photograph the rear of the site from his property. The Applicant is proposing a 20 foot setback but the minimum setback based on the zoning district regulations would be 46.19 feet. Ms. Wilson noted that her analysis was based on the Dimensional Table which is 20 feet. Mr. Piader explained that the By-law specific to Lake Residential requires this calculation and that information is found in the District regulations, not the Dimensional Table. Mr. Piader noted that the 20 foot setback is the default but there is a caveat in this zoning district and he reviewed the language in the By-law. When structures within 300 feet of the lot are setback to a greater or lesser distance than the by-law allows then the allowable setback shall not be nearer than the average setbacks. He noted that this could allow for a lesser setback for some lots, but in this case it is a greater distance which is 46.19 feet. He stated that to proceed with a 20 foot front yard setback as proposed in the plan, they would need a variance to exceed the 46.19 required front yard setback along with the special permit. Ms. Wilson stated that she understood but had not been made aware of this particular requirement. Mr. Piader noted that this particular requirement, the average of 300 feet, is not applicable very often as it typically applies to decreased front yard setbacks. Ms. Wilson noted that she was working to keep the structure from exceeding the pre-existing non-conforming side yard setback. Mr. Piader stated that the front yard setback calculation does not apply to the side yard setback. He further noted that if the issue was not addressed now it would likely be raised upon appeal which would result in a more prolonged application process.

Dr. Shaikhly stated that it was his intention to have the garage about 40 feet from the road and a carport 20 feet from the road. From 20 feet to 40 feet is a carport. The short driveway which will help him when he has to leave in the winter on short notice so that he doesn't have to plow through snow on a long driveway. The carport is there to foreshorten the driveway to have less to plow when he has to have access to the hospital in the winter. Mr. Piader stated that he understood his situation but thought a carport would be considered a structure. Ms. Morgan stated that she thought it was but that she would have to ask the Building Commissioner. Ms. Wilson asked that the Building Commissioner be asked.

Ms. Morgan noted clarification from the Building Commissioner was needed and that documentation showing the setbacks (garage and carport) be submitted. Ms. Wilson reviewed the plan which shows the carport without dimensions and agreed to revise the plan. Mr. Daggett noted that there were some dimensions on the plan which were reviewed. Ms. Wilson noted that it was 26.6 feet to the carport but that the carport dimension was not shown because she didn't think it was needed as it was within the 20 foot setback.

Dr. Shaikhly stated that some of the design was to accommodate handicap accessibility for his father who has not been able to visit the existing house for any length of time due to the house's limitations. The first floor would have wide hallways and doors to benefit his 94 year old father who is in a wheelchair. Mr. Piader noted that ingress and egress would not apply to setback requirements. He added that he thought a carport would be considered part of the structure but would like clarification. If it is part of the structure then a variance application would be required on top of the special permit application to enlarge the pre-existing non-conforming structure. Dr. Shaikhly stated that he understood.

Ms. Wilson asked if that special permit was the same as the special permit required for the impervious area to which the answer was no, it would require a separate application. Mr. Piader noted that the plan needs to be revised to show the dimensions which Ms. Wilson agreed to do.

The Board discussed the timing for the application. Ms. Morgan stated that the Board has to make a decision on or before June 12th unless the applicant agrees to continue the hearing and extend the decision deadline. She recommended August 1st for the decision deadline extension which would allow time for additional information to be submitted, questions to be asked, and time for the Board to make a decision. Mr. Piader asked Dr. Shaikhly if that date was okay with him. Dr. Shaikhly stated that he has been patient throughout this process which has been very lengthy. Things are getting expensive and there have been delay upon delay and he couldn't understand why this couldn't be done in a few days. Ms. Wilson stated that the changes could be done by June 12. Ms. Morgan pointed out that the hearing needs to be continued because the Board hasn't had the opportunity to review the application with the Owner. She added that two more meetings were required, one to complete the hearing and another meeting to make a decision. Ms. Wilson asked if that meant that the Board wouldn't make a decision until August 1st. Ms. Morgan stated no, the August 1st date would allow time to get everything done including making a decision which may not go until that date.

The Board discussed scheduling. Ms. Morgan noted that Dr. Shaikhly would have to sign a form granting permission to continue the hearing and extend the decision deadline which has to be signed and returned so that it can be filed with the Town Clerk. Dr. Shaikhly noted that everything, including meetings with the architects, were being held up by the Board's decision. His builder, Doug Lebel, will not book this project without a deposit which can't be done until a final plan from the architect is completed. He stated that he was under a lot of pressure and was anxious to move this forward to the next step. Dr. Shaikhly asked if there was anything he could do to expedite this process that someone should let me know and that he's been very patient. Ms. Wilson noted that they work with Doug Lebel often and is open as well. Ms. Morgan noted that clarification on the carport from the Building Commissioner would determine if they need to get a variance application submitted to get that process started. She added that they also needed to get the impervious surface special permit process with the Planning Board started since they only meet once a month. Ms. Wilson noted that they understood but that they were waiting on the final approved plan before submitting an application.

Mr. Piader asked if there were any members of the public present would like to comment on the application. There were none. Motion to continue the public hearing to June 21, 2021 at 6:00 p.m. and to accept the applicant's request to extend the decision deadline to August 1, 2021 made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote (Fales – AYE; Cournoyer – AYE; Daggett – AYE; Mason – AYE; Piader – AYE).

- b. Appeal of Zoning Violation Citation for Operating a Saw Mill in a Multi-Family Residential Zoning District; 4 Bartlett Street; Nathan LeBaron (Applicant), Church of Firstborn Kahal Hab' (Owner); Assessor ID 14-B-13-0; Property is located within the Multi-Family Residential (MFR) and Business with Sewer (B4) zoning districts. Continued from April 28, 2021.**
- c. Variance - To construct a live-in office and to operate a church-owned tree business including storage of vehicles, equipment, mobile homes and trailers on property located at 4 Bartlett Street (Assessor ID 14-B-13-0); Nathan LeBaron / Firstborn Church of Kahal Hab' (Owner Applicant). Said site is located both Multi-Family Residential (MFR) and Business with Sewer (B4) zoning districts. Continued from April 28, 2021.**

Mr. LeBaron was present via phone to discuss the applications. He apologized for being late as he owns a tree service and was stuck up in an oak tree due to an emergency response situation and couldn't get down fast enough. He asked how long the meeting was next time since the Board is continuing it. Mr. Piader stated that the meeting does have a set time limit. Mr. LeBaron asked if there was time for him to speak to the matter or will it all be done at another date. Mr. Piader stated that he would like to ask Town Counsel to speak first to direct the Board as the applications were very unique compared applicants normally heard by the Board.

Attorney Jay Talerman noted that procedurally the Board is in a position to hear the applications if he wants to make a presentation. It was noted that Mr. LeBaron has not paid a fee for one of his two applications. Ms. Morgan noted that application fees for the appeal have not been paid. Mr. Talerman noted that the lack of fee payment was a procedural issue because to act on that the Board will need to see that the fees have been paid. As to the other items it's certainly worthwhile to have Mr. LeBaron make a presentation. He stated he could add some comments as the merits of the applications as presented however, its Mr. LeBaron's burden to prove the merits for a variance which are difficult and for the appeal which he leaves to the Board as to whether or not they want to hear since it is not paid for. He noted that the Board could hear the appeal application but hold in in abeyance. Mr. Piader asked the Board if they wanted to hear the appeal application, hear it in abeyance or not hear it at all. Mr. Mason stated that he'd leave that decision up to the Chairman. Mr. Piader recommended that the Board hear the appeal application but hold it in abeyance and act upon it once the application fee has been paid.

Mr. Piader asked Mr. LeBaron to present his applications. Mr. LeBaron stated that he didn't think there was a law specifically prohibiting the operation of a saw mill for a limited amount of time during construction. He's not operating a sawmill operation to make money from selling wood. That's not the case here. He bought the saw mill for one purpose, to construct a fence. Once the fence is complete he has no intention to sawing any more wood at this location. The unique posture of the facts is that he was told to stop building the fence, to stop using the saw mill, but the price of wood is prohibitive for him to build the fence. It is a very expensive fence. At the same time he was told to stop using the saw mill and stop building the fence he was ordered to put wood on the other side, the outside because he has the ability to produce the boards and he wants it to look nice on both sides. Mr. LeBaron stated that he installed the fence due to theft. He that he's lost thousands of dollars of stuff and when he returned from being out of the country he found that things are gone because he can't put a fence in so it's really a time sensitive issue as well as a security issue. He noted that he's had cameras on the property that are not functioning and he can't seem to stop the theft. He stated that is the problem and that he's losing a lot of money. Part of the problem is that the fence doesn't have the boards on the right side – that's a big problem. There's something about the foundation not being good enough on certain parts of the fence and that there are certain parts of the fence that are not his. He was told to

build a fence by the people who do own it and then they sold the property. Now the new owner is telling him not to go on their property. So now he's in the position where he cannot follow the order of the Building Inspector to go on these people's property who are the new owners and the deal with the previous owner is off. He stated that he would like to proceed with finishing the construction of the fence and installing all footings and do whatever to make the fence strong enough but his hands are tied and he doesn't have the funds. He noted that if he's told take down the fence all together and stop building then he's open to theft. At the same time he would like to ask the Board, because there's pending litigation regarding this, to allow him to put up his front sliding gate because he needs the area secured. He has too much equipment, too many things, and the theft is non-stop. He estimated that he's probably lost \$10,000 which is not a small issue and that he needs a fence, not just cameras.

Mr. Piader noted that, as far as he could tell, the fence was not the issue but rather the issue is the saw mill. Ms. Morgan asked Mr. Piader if, at this time, the Board was dealing with just the appeal. Mr. LeBaron stated that he was just talking about the appeal and that she was talking to him. Ms. Morgan stated understanding the Board wanted to deal with the issues related to the appeal which is specific to the zoning violations to which Mr. LeBaron disagreed, stating that she had it backwards. Mr. LeBaron went on to say that all of this was for a variance. Mr. Piader stated no, the first thing was the appeal of the operation of a saw mill. Mr. Piader noted that Mr. LeBaron stated that the saw mill was only operated briefly. In looking through the Town's by-laws, a saw mill is not specifically stated as a use in District 1 or District 3 or Business District 4. Mr. Piader noted that Mr. LeBaron had stated that the saw mill was operated temporarily and asked which dates was he cutting wood to build the fence. Mr. LeBaron stated that it has been going on since December but that he honestly didn't recall as he has been under a lot of pressure to do this and that which has been nonstop. He stated that he couldn't remember the dates he was using the saw mill. Mr. LeBaron stated that what he really wanted the Board to think about is that he doesn't know what is the problem with the saw mill and who it is disturbing. What he'd like to know if it was the noise of the saw mill? He noted that he was running it in the afternoon and there's a lot of noises. Was it the saw dust? People are allowed to use skill saws and other things to cut wood. Is it too much saw dust? He stated that he doesn't understand what the problem is for him to finish using it and then stop. He's not making money. He's not running a commercial business where he's selling logs, that he mills them. He's just trying to put up the fence. It's a time consuming thing, it's costly and he's losing so much money every time he gets robbed of another chainsaw. He can show the receipts for all the chainsaws he's had to buy like a \$1,000 Husqvarna. People are just breaking locks and stealing his stuff. So he needs the fence which will make - it will make it harder for people to jump the fence. Mr. LeBaron stated that he doesn't know what the problem is. If it is that important for him to not make saw dust, not make noise, he can make noise at intervals like other pieces of equipment that are loud when doing construction. He wants someone to tell him what the problem is and which law, for what reason, what authority states that. Does he have to stop building the fence?

Mr. Piader stated that the Building Commissioner had made a determination and that is what Mr. LeBaron is appealing to the Zoning Board of Appeals. The Board has to assume that the determination is, in fact, valid which is why he is asking questions starting with the saw mill so that the Board can gather the facts and make a decision on the appeal. Mr. LeBaron stated that assuming it has legal validity, and then ask why a variance cannot be granted. He wanted to know if he should start calling the cops every time, which he hasn't, which is a lot of time and money the officers have to be paid and that it's a mess. Is there is a compelling governmental interest in having him stop using the saw mill as opposed to any other wood cutting device such as skill saws and other equipment commonly used

at construction sites? They produce a lot a saw dust and make a lot of noise. Mr. Piader noted that he understood the arguments including his constitutional argument.

Mr. Piader asked about unique site conditions, how it's causing a hardship, and how this doesn't derogate from the public good, and how it's in line with the current Webster Zoning By-law, to operate a saw mill, and also how it relates to the variance application. Mr. LeBaron noted that it was for religious purposes. The property is for religious use and is desecrated when other come on the property who don't belong there which is constantly happening. People are coming at night and when he's gone for work because they can see which trucks he drives. He needs to have a fence to stop crime. He is complaining of being a victim of a crime over the past couple of years. He's a victim of a crime which he has been complaining about for the past couple of years and it is definitely in the public interest to stop the crime. He doesn't believe that there's a compelling governmental interest in stopping the saw mill in the context of what is happening. He has carefully built a fence which has log footings that are three feet wide logs so the base is firm. The wind is not going to take it. It is hooked by a winch, brackets, 5 bolts, 20 bolts, and 5 on each side. It's a secure fence. It's not going to tip over. There are certain parts that could be done better but those parts are not on his land. The parts that are on the land that he owns...If he doesn't do it right over there, then they can complain and he'll fix it but they need permission from Town Hall. They give him permission to go over there and then he'll see if he's interested or not, now that they've a new owner who told him to cease. He had a happy arrangement with the previous owner. He doesn't see any other point other than stopping crime. He told the Building Inspector that he needed a fence and a front gate – that's how bad the crime is. He is a victim of a crime, he can't stop them from stealing his property without a fence. He does not have enough money now that they stole all the property and his resources are depleted. If he had the \$10,000 that he spent on all the equipment that was stolen then maybe he'd have enough money to buy wood to not run the saw mill but that's not the case. He would have even less money and resources. He's in the tree business so he can cut down a tree, bring it over, cut it with the saw mill and make boards until he is done until the Building Commissioner is satisfied that he has put the boards on the other side the fence. That's going to be a lot of milling and a lot more wood to go. The Building Inspector is refusing to inspect the hole for the fence post for the sliding gate at the front because he (the Building Inspector) says there's a contest between him (Mr. LeBaron) and Town Hall which stops him from just inspecting the hole that he dug so that he can put the fence post for the front gate. Unless he (the Building Inspector) approves the hole as being big enough and the right dimensions for a 50 foot wide sliding gate on rollers, he cannot continue. And yet he's being told that he's going to get a fine for every single day that this is going on. He (the Building Inspector) won't inspect the hole and at the same time he won't let him (Mr. LeBaron) continue to use the saw mill which he feels is unreasonable. He asked the Board to take action soon to protect his property, not be the victim of theft any more, which is in the public interest. He didn't think there was anything more compelling than stopping this crime. He doesn't think there is a neighbor over there that looks into a saw mill for a couple of hours each day until he's building the fence – it's not outrageous, it's not producing saw dust flying through the air any more than if he was running a skill saw. Saw dust goes down, he picks it up and puts it bags and delivers it to a location that is appropriate. He's not leaving it on the ground or dumping on the Sheriff's Office property.

Mr. Piader asked about the unregistered inoperable motor vehicles on the property in violation of Section 650-26 referenced in the appeal. He asked if Mr. LeBaron had any evidence showing that such vehicles were not being stored on the property. Mr. LeBaron stated that these vehicles, which he purchased, are owned by the Church. He has one bucket truck that has just arrived a couple of weeks ago that is not registered yet because they are owned by the Church, and because of COVID 19 a lot

of people have had a lot of lenience and the IRS has been moving like a snail in producing documentation. He has to have a certain number before the RMV will allow him to register and insure them under the Church's name as they belong to the Church. He stated that it's not cost effective to spend - these are big trucks - to spend thousands of dollars insuring and registering them and then switching the titles and registering them all over again. He cannot register them in his name because they are not his. It is not lawful for him to take something that is not his and register it in his own name. This is Church property. Even if the IRS were to give him the documents he needs, he still needs tax exempt status to get the RMV to not charge him the taxes. He only has three things that are not registered. They're all big, expensive trucks. He made application to the IRS a long time ago and they've taken their time with COVID 19 going on to give him the numbers, and the papers that have the corresponding documentation that this is a tax exempt church. He stated that he has a church that is, by affidavit under 501(c)(3). So it's a legal argument that the RMV should not be forcing him to get documentation from the IRS. In the first place, 501(c)(3) governs corporations and he has a church that is not a corporation, it's organically by affidavit which is a legitimate church not governed by 501(c)(3). It's governed by 508 which does not require him to talk to the IRS because it is automatically tax exempt by its nature under 508. This is a legal argument that the RMV is not familiar with. He did not have time to go to Court with the RMV and set them straight although he may attempt that despite it being very expensive. He's in a position, through no fault of his own, and, because of COVID 19 along with the IRS and RMV, where he cannot register the trucks. Mr. LeBaron stated that he's going to take some of the trucks out of the country and donate them to church members in Mexico. He can't take the threat of fines any more when it is not under his control. He would have had them registered and insured and does have title for them.

Mr. Piader noted that he understood Mr. LeBaron's position but that Section 650-26 doesn't make an exception for problems related to the RMV. It states that you can't have an unregistered vehicle permanently disabled stored or parked on your property for more than 30 days unless it's kept in a building, screened or otherwise located so as not to be seen from a public way or abutting property. Mr. LeBaron noted that one of them, barely arrived a month ago, is not in violation yet. One is clear in the back and only one can be seen as of right now. He plans to move it. He doesn't want the Board to give him fines for the following several reasons the first being that the RMV will not allow him to register them properly. The second being that the IRS is holding it up because the COVID 19 epidemic where people have put in applications, some languishing for months, and in his case, for years. The IRS is currently investigating as to what caused the delay.

Mr. LeBaron stated that the argument here is that the Town Hall tells him he cannot put commercial vehicles on the property. He wanted to know if that was a separate issue. Mr. Piader stated that he was still focusing on the unregistered inoperable vehicles. Mr. Piader noted that Mr. LeBaron had started to address the issue when he addressed the three vehicles on site in question. Mr. Piader noted the burden of proof. He noted that the Board has to take the Building Commissioner's determination as fact. Mr. Piader stated that he would like to see some pictures of where the vehicles are parked, how they're not visible, to better understand Mr. LeBaron's argument. Mr. LeBaron suggested that he would move the vehicles off the property by the time pictures be received. Mr. Piader noted that it would support Mr. LeBaron's argument and would show that he was no longer in violation. Mr. LeBaron stated that he didn't want to be fined until that happens. He has a guy with a commercial tow truck business that will helping him move them soon. He has organized two different places in Massachusetts where he can put them and then, from there, the trucks will be driven to Mexico, a few of them. He stated that he was not making a lackluster effort and that it was difficult to find places to park commercial equipment in Massachusetts and that he had purchased this property for that purpose.

Now he's in a position where he can't register them but will move them. By the time he takes a picture of them and sends that picture, the trucks will be gone. He is in the process of purchasing another location to move the trucks to because he was forced to buy another place. He has a friend who has a place to store the vehicles until he closes on the new property. Buying another property takes a long time. Mr. LeBaron wanted the Board to know that he's making a good faith effort but registering those three vehicles are out of his control. One vehicle is exempt from violations because it hasn't been 30 days. He's working on the other two vehicles. He didn't know how many months they had been there but one of them is out of sight in the back because the fence blocks the view. The crane truck is just too big. He bought it because he wants to build there and put the foundation in. He can't register them so he'll move them and would appreciate it if the Board would say no fines be imposed upon him because of it. If he doesn't move it then he will give the Board a picture.

Mr. LeBaron asked how much time he had to send pictures. Mr. Piader noted that the zoning violation cited by the Building Commissioner was cited on August 31, 2020. Mr. LeBaron was asked to comply within 7 days of receipt of that letter. Mr. LeBaron stated that he wanted to address the issue of and the right to notice. He stated that he is operating from the date of March 4, 2021, sent by certified mail, which includes two different letters. He stated that he's making a legal argument where there was no due process or lawful and appropriate notification. He needs legal notification by certified mail, not two letters sent together certified mail with one letter dated months before so that there can be proof of service. Mr. Piader asked for clarification regarding receipt of notice. Mr. LeBaron stated that he received a letter with a footnote and attachment dated August of last year although he couldn't find the paperwork just at that moment. So he's operating from the March 2021 letter sent via certified mail. Mr. Piader reviewed the letter of August 2020 relating to the zoning violations of offensive use, unregistered inoperable vehicles, and the trailer and mobile home. Mr. LeBaron stated his objection to that letter due to the lack of service, lack of notice. If the letter requires him to comply within a certain amount of days he would need to know the date he received it. Including a letter dated from last year is not appropriate service. Mr. Piader asked if Mr. LeBaron had ever received the letter dated August 2020 to which the answer was no. He only received it with the letter dated March 2021 which was served via certified mail. Mr. Piader asked when Mr. LeBaron received the certified mailing sent in March. Mr. LeBaron said he couldn't find the paperwork telling to stop building the fence, to stop operating the saw mill.

Mr. Piader asked about the violations relating to the mobile home and trailer. Mr. LeBaron noted that he had purchased the mobile home for the purpose of putting things in it because he was told to stop using the other building on site, which used to be a shed, which he has done. He got the mobile home to use for storage until he could use the new building and then sell the mobile home. The mobile home needs repairs and a new roof, which is very expensive, along with other things before he can sell it for the price it is worth. He got it, donated it to the church for the purposes of generating revenue which he doesn't think is objectionable. Mr. LeBaron noted that he didn't know that he wasn't within his rights to keep it there but that he should be able to put things in it and be able to keep it there until he can sell it. Mr. Piader asked if it was being used for permanent habitation or an office. Mr. LeBaron stated no, and if it's used as an office, it is for the sole reason that he needs a place to put the papers. He can walk in there to store papers and files to keep them out of the rain. Mr. Piader stated that he would like to see some evidence of that use of the mobile home. Mr. LeBaron stated that he could take a picture of the desk, papers and a recently purchased little file. He needs everything to be secured with a lock including tools which keep getting stolen. He plan was to use the other building up there but was told to stop. Now he's got multiple things coming at him. The other building is currently under construction but that he might have to get rid of that. It sits on the only portion of the site that

is zoned for commercial which would be the only place where he could put the bucket truck if the Board tells him to move it off the other area of the site. There would be space to park a bucket truck, a chip truck and a wood chipper on that portion of the site if he got rid of the building currently under construction, which is to be used for an office and storage within the commercial boundary. Construction has been stopped by order of the Building Commissioner and lack of authorizing to continue to build the structure. If the Board allows him to park certain amount commercial equipment there for the purposes of continuing what he's been doing since he bought the property in 2008, which was marked as commercial, then he'll be able to leave the office at that location. If the Board says no then he'll be able to take the office out of there and still park the commercial equipment there. He stated that he didn't think it was unreasonable to allow parking of the bucket truck next to the office because it is so close, on the line separating commercial and multi-family residential. He would like to keep that building and not take it out. If he takes it out then his only source of income is the tree business for which he has to have a bucket truck, a chipper and a chip truck. His business will be shut down unless he can keep the office and park the truck next to the office.

Mr. Piader noted that he needed evidence beyond Mr. LeBaron's word to rebut the Building Inspector's findings. Mr. LeBaron suggested that he provide an in camera viewing of the property for the Board to see everything that is present. Or he could provide pictures. Mr. Piader stated his preference for pictures. Mr. LeBaron stated he could provide video footage which Mr. Piader agreed would be fine as long as it was relevant to the appeal violations that were cited and discussed. Mr. LeBaron said that he could take footage on his phone, put it in digital format, and then send it to someone else's phone. Mr. Piader stated that the footage would have to be sent to Town Hall to be included as part of the file. Mr. LeBaron asked for cell phone number at Town Hall where he could send it to. Mr. Piader stated that email would be the best way to send it. Mr. LeBaron stated that he would figure it out limited the scope of what the Board is considering.

Mr. LeBaron returned to the issue of the mobile home. He stated that parking the mobile home there wasn't harming anybody. The church owns the property and the mobile home which has the right to keep it there, fix it and then sell it. He stated that he didn't think it was ugly, even if it sits there and languishes for years. He doesn't know why it is in violation. It is an appropriate use to keep it there, put things in it and use it until he can complete his building which he doesn't know if he'll be able to continue to build. He needs to know if he's going to sell the property and just move out of town. He had to build the fence to protect what was there. Now he has to determine if he is going to turn that building into an office and park things next to it or remove it and park the commercial equipment in that location instead because it is a commercial spot. He thinks it is overly burdensome to move it now that he's put it there.

Mr. LeBaron noted that the Assessor has, since 2008, put the lot as commercial, not partly commercial and partly residential. When he bought the property he relied on that information. Mr. Piader noted that the Board would at least need a continuation to a later date to receive the evidence requested and to consider it. Mr. LeBaron asked for a motion to put a stop to all fines. Mr. Piader requested that Town Counsel respond as to what the Board is allowed to do with regards to fines. Attorney Talerman noted the Building Commissioner still had jurisdiction over compliance or non-compliance of the Zoning By-law. The Zoning Board of Appeals has, at the time of decision, the authority to bind the Building Commissioner. While this matter is still in process before the Board the Building Commissioner still has control over compliance and non-compliance regarding building codes and zoning code on the site. If the Board were to find no violation at end of the process, the Board could eradicate the fines. But for now the Board is still hearing evidence and at this juncture the Board

doesn't have the authority to change the orders of the Building Commissioner who, through the codes, has the right to issue fines. Mr. Talerman explained that there was a separate legal process if Mr. LeBaron wants to appeal any fines which is typically appealed to the District Court.

Mr. LeBaron stated that, on its face, that this is not a commercial property is negated by the Assessors office producing documentation since 2008 that this is a commercial lot. It doesn't say anything about multi-family residential since 2008. He bought the property in 2018. On its face there's no information stating that he can't park commercial vehicles on site, according to the Assessors office. If the Assessors office is mistaken then they need to suck it up and change it back to multi-family residential / commercial so that it is clear from Town Hall what the Assessors position is. Mr. LeBaron stated that he and a lot of other people were relying on the Assessors documents including with his realtor, his attorney, the seller's attorney and realtor and the advertisers of the seller which listed this as commercial property for sale. He stated that he didn't think there was any jurisdictional problem for the Board to declare right now that because of the Assessors documentation relied upon by every single individual, every single party, and the advertising agency, that is not a violation legally. It can't be a legally binding violation of parking commercial equipment at all. Unless and until the Assessors office produces the proper notification that the Building Commissioner has the jurisdiction. Mr. Piader interrupted Mr. LeBaron and asked him to identify the violation he's contesting as a result of his Assessor defense. Mr. LeBaron stated that one of the violations accuses him of offensive use for parking commercial vehicles in a multi-family residential area to which he says no, that is not a fact. The Building Inspector, even if he goes into the basement of Town Hall and finds a map that differs from the Assessors documentation, he didn't read the maps. None of people or professionals relying on the Assessors documentation rely on the map dusted off in the basement. They go on the information provided by the Assessor and the Assessor is the authority on what kind of land this is. And the Assessor said, in documentation dated 2008, that it is a commercial property. Mr. Piader asked if the Town should be told to stop citing the offensive use violation because they asserted that this was a commercial property. Mr. LeBaron said yes, that the Town should be stopped dead in its tracks, and this was a commercial property. Mr. Piader stated that he understood Mr. LeBaron's position on this matter. Mr. LeBaron stated that the Building Commissioner had the jurisdiction to go to the Assessors office and tell them that they (the Assessors office) have been making a mistake and that, according to the map since 2008, the mistake must be corrected. If the Assessors then correct it and then serve Mr. LeBaron notice that they had made a mistake which has now been corrected, then he would say it was too late and that he was grandfathered in. He stated that he didn't think the Building Inspector had the jurisdiction to be the judge over what zoning this is and that it was not his job. That is the Assessors office's job. And if someone thinks the Assessor is not doing his job since 2008 then they go correct them, bring it to his attention, serve him a due process notice and not jump out at him and tell him he's in violation. They should fix their mistake, notify him and then propose how it can be dealt with. Mr. Piader noted that he understood the argument and the facts presented but in order for the Board to consider it as a defense they would need to see some supporting document that showing the Town's error beyond what he is claiming. Mr. LeBaron stated that he moves an oral verbal motion for somebody within the Board to go to the Assessors office and get a copy of the file showing that, previous to 2008, that the lot of land were considered to be multi-family residential. Mr. Piader stated that it was Mr. LeBaron's job to find the facts and present the evidence and that it was not the Board's job. Mr. LeBaron stated that he would do that but couldn't because he was on a phone. Mr. Piader stated that he could do so at a continued hearing.

Mr. Piader noted that the next meeting is scheduled for June 21st as a date for a continuation. He asked Ms. Morgan about the time line and she noted that the 100 day requirement for the Board to take action

on the variance application would expire on June 19th unless the Applicant agrees to extend the decision deadline. She was uncertain about the expiration time line of the appeal application. She recommended an deadline for decision to be extended to August 1st to give the Board time to receive and consider new materials and have time to make a decision. Mr. LeBaron stated his objection and that it was too long. He could get the documents before the Board the next day and the Board will then see that the Assessor had the lot identified as commercial property and that he could submit video as well. Mr. Piader stated that the Board's other option would be to close the public hearing and make a decision based on the evidence presented. Mr. LeBaron noted that the Board has asked for more evidence so that wasn't an option. Mr. Piader explained that those were the only two options available to the Board continue the hearing and extend the decision deadline to August 1st or close the hearing tonight and make a decision. Mr. LeBaron asked about the June date. Mr. Piader noted that the deadline for making a decision is June 19th which before the June 21st meeting date. Ms. Morgan noted that granting an extension to August 1st gives the Board enough time legally to continue the hearing, take in more information on June 21st, and then make a decision. Mr. LeBaron stated that he accepted that idea but there continues to be the problem with fines. He also noted that he's filed a lawsuit against anyone who is involved who needs to recognize RLUIPA (Religious Land Use and Institutionalized Persons Act) on top of all these legal arguments to identify a compelling government interest in obstructing a religious piece of land and a church from actually performing religious actions that need to be done for the purpose of religion. That law has to be in effect as well and balancing against any compelling governmental interest in all the different alleged zoning violations. Mr. Piader stated that he would need additional information on RLUIPA if it was to be used by the Board as a potential defense. Mr. LeBaron stated that it was his primary defense. Mr. Piader stated that he would like to know how RLUIPA was to be used for each citation from the Building Inspector and added that they can't stop or overturn fines while the Board was still in the fact finding stage. Mr. LeBaron stated that he understood but that he continued to be concerned that the posture that the land is only being identified as commercial by the Assessor, taking jurisdiction away from the Building Commissioner and putting it in the Board's jurisdiction right now. Mr. LeBaron stated that the Board can, right now, make a decision about commercial equipment being on the site.

Mr. Piader asked that Attorney Talerman advise the Board as to what it can and cannot do. Attorney Talerman noted that he had some comments first noting that he had a baseline concern about extending the decision deadline. For an extension to be authorized, the Board would that extension in writing. His concern is that if the time runs out before the next session that there would be an issue if a written extension was not received. He recognized that given the Zoom meeting it was difficult and if the Board were meeting in person that Mr. LeBaron could write something out on paper, submit it and that would be sufficient. The law requires the paper. Attorney Talerman agreed with Mr. Piader in that the Board would need some proof regarding Mr. LeBaron's assertion about the religious position. He noted that the main address for the church is not this property but rather in Norfolk. Mr. LeBaron is not the president of the church, which raises other issues, but it will come down to whether or not a tree business is a primary religious use which is what Mr. LeBaron has suggested. There wasn't enough detail on that on its face. Mr. LeBaron would have to tie that use to a legitimate exercise of religion which is Mr. LeBaron's burden to show and that he can't just say it is religious and have the Board take his word for it. Mr. Piader asked Attorney Talerman how the Board can get a written extension to August 1st. Attorney Talerman suggested that Board has a meeting before June 19th. He noted that the 19th was a Saturday, which is the 100th day, and that the Board doesn't get the benefit of the next business day. A decision would have to be made on or before Friday, June 18th. Then there would be 14 additional days in which to file a decision. Attorney Talerman recommended that the Board continue the hearing to a date before the June 19th in order to be most careful. Ms. Morgan noted that

there is a standard form used at hearings where applicants can sign for continuances and deadline extensions. She asked if she could send that form to Mr. LeBaron via certified mail and give Mr. LeBaron a week to return it. Attorney Talerman stated that it wouldn't work because if Mr. LeBaron doesn't follow through then the Board does not have it. Mr. LeBaron stated that he would return the form. Attorney Talerman stated his concern given the long standing posture of enforcement of this matter. He noted that the Board should have a meeting before that in case the signed form is not returned. That meeting could be specifically for receiving and taking action on the signed form. Mr. Piader noted that all but Mr. Fales has indicated that they are available the week of June 14th. Ms. Morgan suggested that Mr. Fales could use the Mullin Rule to continue to be eligible to vote if the Board met on a day that Mr. Fales wasn't available. She noted that scheduling a meeting with only one agenda item, to accept the applicant's written request to continue the hearing and extend the decision deadline, that it would be a short meeting. Attorney Talerman noted that such a meeting and vote would be ministerial, procedural in nature, and that it could be missed by a member and they would continue to be eligible to vote. However, if the form is not received the Board would have to move forward that night in making a decision based on what has been submitted to date with those members present at the time adhering to the voting requirements for each application. Attorney Talerman noted that his advice to the Board was based on an abundance of caution. He noted that Mr. LeBaron could hold up a signed form in a Zoom meeting but it could not be done via phone which is how Mr. LeBaron is participating. Mr. LeBaron asked if the meeting was being recorded to which the answer was yes. Attorney Talerman noted that an audio recording does not qualify. Mr. LeBaron asked if he could be placed under oath. Attorney Talerman stated no because there was no one present who could swear him. He noted that the best thing the Board can do is continue it to the 15th or 17th, both days on which is available. Otherwise the Board should hold the hearing, close the hearing and be done with it. Ms. Morgan noted that the 15th is the last day the Board can meet by Zoom given the lifting of the Governor's emergency orders. Mr. Talerman stated that the State allows for an additional 3 days beyond June 15th, and likely more time beyond that based on some legislation emerging.

Mr. Piader asked the Board if June 15th was acceptable to all. It was. Mr. Piader asked Attorney Talerman about the lack of payment of application fees for the appeal and if that would affect the proceedings. Attorney Talerman suggested that the Board take a vote now to direct Mr. LeBaron to pay that fee, unless the Board waives it, and that failure to pay it by the 15th or 21st (if the hearing is continued to that date) would be cause for rejection.

Motion to direct the Applicant to pay the fee for the appeal application by June 15, 2021, to possibly reject the application for non-payment made by Mr. Cournoyer, seconded by Mr. Fales. Mr. Piader asked if there was any discussion on the motion. There was none. Motion passed unanimously 5-0 by roll call vote (Fales – yes; Cournoyer – yes; Mason – yes; Daggett – yes; Piader – yes).

Motion to continue both the appeal of the zoning citations and variance application for 4 Bartlett Street to Tuesday, June 15, 2021 at 6:00 p.m. made by Mr. Cournoyer, seconded by Mr. Daggett. Mr. Piader asked if there was any discussion on the motion. There was none. Motion passed unanimously 5-0 by roll call vote (Fales – yes; Cournoyer – yes; Mason – yes; Daggett – yes; Piader – yes).

- d. **Variance Application – Lot size dimensional variance to construct a two car garage with living space above at 60 Colonial Road; Bryan Pelletier (Applicant / Owner); Assessor ID 39-A-54; Property is located within the Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.**

Mr. Daggett read the hearing notice. Mr. Piader reviewed the procedures and then asked the Owner, Bryan Pelletier, to review the application. Mr. Pelletier deferred to his engineer, Zachery Gless of Existing Grade, Inc.

Mr. Gless stated that 60 Colonial Road was an undersized lot in the Lake Residential zoning district which requires a 5,000 square foot lot size. Norman Hill of Land Planning, Inc. prepared a site plan and determined that the lot size is 3,227 square feet which falls below the required area to be a by-right build. There is an existing foundation on the site which they hope to use a portion of to place a new structure on the site. All other zone requirements, including setbacks and lot frontage, are met except the lot area. All those dimensions are shown on the submitted plan. The proposed structure will have a two car garage which will take vehicles off the street and safely out of the travel lane. The lot was created and shown on a 1924 plan which makes it pre-existing non-conforming. The lot was created prior to subdivision control law in Massachusetts which makes for an inherent hardship. The Pelletier's are not able to purchase any adjacent land to make the lot compliant in regards to area. The variance request for lot area and that all other zoning requirements are met for the Lake Residential zoning district.

Mr. Piader asked Mr. Pelletier if he would like to make a statement. Mr. Pelletier stated that Mr. Gless had summed it up in that the lot is undersized. Mr. Piader asked if, other than size, if there were any other unique factors or circumstances. Were there any other lots on the Lake in the Lake Residential zoning district that are similarly sized that have single family homes built on them? Mr. Pelletier stated yes. He submitted information demonstrating a number of properties that are unique, some built in the 1940's with houses built on undersized lots, others with new construction on under sized lots (Browns Brook Road) where no variance was given, and others that have been added onto over the years. Some were built on small square footage presumed to be grandfathered in. Mr. Pelletier noted that there was a wide range. There are some lots on Birch Island that have been built on where some were existing cottages that were knocked down and full concrete foundations were poured and beautiful homes constructed. One lot on Point Pleasant was constructed on an undersized lot. Other older lots had additions added, some of which received variances. Others have built additions upon additions, some of the probably haven't applied for variances, some of them probably done in the 1950's and 1960's. Sharon Pelletier noted that property cards had been uploaded. She noted that it was a lot to go through so they prepared a table summarizing the information which has also been uploaded. This table was displayed on the screen for all to see. It includes address, lot size, road frontage and setback information particularly as it relates to properties abutting the water. The Pelletiers pulled the deeds, checked the dimensions and compared it to the GIS mapping. Twenty one properties are listed on the table but it's not all inclusive but is a good cross section. She noted that the information is presented in ascending order. Mr. Piader asked about 27 Point Pleasant Avenue and asked if a structure was built on it. Ms. Pelletier stated yes and that property is located down by the marina on Point Pleasant Avenue. The lot has spilt zoning including Business 5 and has a fairly substantial cottage built upon it. Ms. Pelletier noted that field records show which properties had renovations, some of them extensive, such as on Birch Island and Point Pleasant which have fairly new construction. The two properties at 61 and 63 Point Pleasant are at the end and don't have road frontage but rather rights of way to cross over 61 to get to 63 and 61 was a rebuild. The current structure had a substantial renovation that went up an entire second floor. The dates that permits for new construction are shown on the field cards. Mr. Piader asked if the only way for them to increase the size of the lot is to purchase additional property from the abutters to which the answer was yes. Ms. Pelletier noted that abutters oppose this project and would not sell them any land.

Mr. Piader noted that this project would involve the construction of a single family structure not the building of a commercial property that would disturb the neighborhood with excess noise or dust. Ms. Pelletier stated that was correct.

Mr. Piader asked if the Board had any questions for Mr. Pelletier or Mr. Gless. There were none. Ms. Morgan noted that she and the Building Commissioner had prepared a staff review. Mr. Piader asked her to review it. The information was presented on line for all to see including the 1924 map showing the subdivision still considered valid as it was filed prior to subdivision control law, site photos and an analysis of lot sizes within 300 feet of the site. She noted that the original subdivision map shows the road ending at the cul de sac, which differs from lots in existence today which go beyond that. Ms. Morgan reviewed the lots included in the analysis – only those lots on Colonial Road with structures on them were included as they were in the immediate area. Vacant lots were not included. The Pattison Road lots, which are within 300 feet, were not included as they didn't seem relevant considering that those lot sizes were even larger. Ms. Morgan noted that the average lot size in the area is .225 acres (9,835 square feet) and the lot in question is 0.08 acres (3,350 square feet). Over time some of the lots appear to have been combined with others to create larger lot sizes. The staff review included an overview of recent permits sought from the Zoning Board of Appeals and the Conservation Commission pertaining to subject lot. There is a superseding Order of Conditions from MassDEP which was issued when the Conservation Commission issued an Order of Conditions denying the construction of the house based on the Commissions wetland setback policy. Ms. Morgan noted that the last notation references the Applicant's request to supply a letter to the Board stating that no building permit would be issued for this property in the future. She stated that the decision was made by staff not to issue that letter as it is not the position of the Town to deny a building permit that hasn't been applied for. If, in the future, a building permit is denied then Mr. Pelletier would have the option to appeal that decision directly to the Zoning Board of Appeals. Mr. Piader asked the Board if they had any questions regarding the staff report. There were none.

Mr. Piader asked if there were any comments from the public. Mr. Ray Prunier, 57 Colonial Road, stated that he was representing a group of abutters including himself and his wife. Those abutters are William Stamper & Gloria Bishop, 51 Colonial Road; Lee & Lois Foshay, 63 Colonial Road; Darryl & Susan Cyr, 62 Colonial Road; and Joshua Young, 55 Colonial Road, all, with the exception of Mr. Young, were present on line at the hearing. They have been in opposition to this project for over a year and strongly oppose it in any way they can. Mr. Prunier noted that they had submitted a letter of opposition and have submitted a letter from their lawyer representing their position. He reviewed a few points. This lot is not typical for the area. He noted that they couldn't understand the hardship argument since the Owner is in the real estate business and he should have understood the legal implications and the Town's laws, rules and policies are prior to purchase. Mr. Prunier stated that it was clear that this was not a buildable lot. The Owner did not inherit the hardship but rather created his own self-inflicted hardship when he purchased the property knowing that it was undersized. Mr. Prunier noted that his wife and her family have owned their property for over three generations and have a lot of history as it relates to the area. He stated the Conservation Commission clearly did not agree with the project as it backs up to wetlands which are really a swamp. Mr. Prunier noted that while beauty is in the eye of the beholder that the abutters do not agree that the proposed structure is appropriate for the area. The abutters are concerned for their safety. The original plan had a kitchen in the garage which doesn't seem to be included at this time. Mr. Prunier noted that access is very limited in the area and that you can't even turn around very safely which, in the past, has included garbage trucks. From a zoning standpoint, he noted that some of the property information which was challenged by the Conservation Commission who had the Town environmentalist come and redo where

the water line was which was different from the site plan submitted by Mr. Hill. Mr. Prunier noted that the neighbors on the cul de sac, himself included, had to give up property to expand the cul de sac now owned by the Town. Mr. Prunier stated that the property included on the site plan for this project was actually Town owned land relating to the cul de sac which reduces the actual lot size shown on the plan. He noted that while that may not seem to be a lot that there appears to be misinformation used to get the end result.

Mr. Piader asked the Board if they had any questions for Mr. Prunier. There were none. He asked if there were any other comments from the public. There were none. Mr. Piader asked if any other comments were received. Ms. Morgan reviewed comments received from Town departments including Fire, Water, Sewer and Conservation. The Water Department noted that water service would have to be connected to the site. The Conservation Agent commented on the MassDEP superseding order of conditions which rejected the wetlands setback policy. The other departments had no comment. Written comments from the abutters, the Applicant and the attorney for the abutters were also received.

Ms. Pelletier noted that Attorney Howard Potash, representing the Pelletiers, would like to speak. Mr. Potash reviewed the history of the site. A stone foundation was installed as a cellar with windows in 1941 by Mr. Bayer who decided to abandon the construction to build another house on Webster Lake. This lot has sat with the stone foundation for about 60 years and during that period some debris would have gone into the Lake. Construction proposed by his client would include a very attractive two car garage of 724 square feet – small construction, smaller than the average single family house – and 500 square feet of living space. There would not be additional traffic or parking as cars would be in the garage. At most one person would occupy the living unit. He noted that there are no setback violations. If the lot were a sufficient size, 5,000 square feet, then a much larger house could be built. Mr. Potash noted that the hardship was that the lot has been sitting there, without the possibility of purchasing additional land, for 60 years with an abandoned stone foundation. He stated that there are no safety issues. If one car comes down the road it will be parked in the garage and would not block emergency vehicles. The project would not interfere with the public good and would, in fact, would enhance the area as opposed to the foundation that's been sitting there for many years. Mr. Potash disagreed with the neighbors' supposition that the project would negatively impact them economically as Lake property has been increasing in value tremendously and this project would enhance the values of the abutters properties. Mr. Potash stated that the project does not derogate from the zoning by-law as this property originated from a 1924 subdivision plan that had smaller lots which is typical not only of the Lake but in other communities throughout Massachusetts. People have constructed houses on lots smaller than 5,000 square feet. Mr. Potash pointed out that his client had demonstrated that there have been a number of houses built or expanded around the Lake that made those lots smaller than 5,000 square feet. He reiterated that the project does not derogate from the zoning by-law, would not create any adverse effects including safety, that it would enhance the neighborhood and be an improvement over existing conditions.

Mr. Piader asked if the Board had any further questions. There were none. Mr. Piader asked if Mr. Pelletier or Mr. Gless had any additional comments. Mr. Gless stated that everything was covered and reiterated that this is a pre-existing non-conforming lot created in 1924 and that the proposed structure meets the current zoning setbacks.

Motion to close the variance application hearing for 60 Colonial Road made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously, 5-0 by roll call vote (Fales –AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

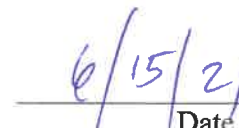
4. **Staff Report** – Ms. Morgan noted that the Governor’s emergency orders regarding public meetings will be lifted on June 15, 2021. After that date, the Board will be required to return to in person meetings. Protocols for safety will still be in place such as the availability of hand sanitizer. Masks may be worn at the discretion of each individual but are not required in accordance with Governor Baker’s orders.

5. **Next Meeting Date** – The next meeting will be held on Tuesday, June 15, 2021 at 6:00 p.m.

6. **Adjournment**

Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote: Fales - yes; Mason - yes; Daggett - yes; Cournoyer –yes; Piader - yes. The meeting was adjourned at 8:16 p.m.


Chris Daggett, Clerk


Date

EXHIBITS

Public Hearing 2b. Special Permit Application - Expansion of pre-existing, non-conforming side yard setback requirements; 70 Bates Point Road; Hadeer Shaikhly (Applicant / Owner); Assessor ID 50-A-37-0.

- Memorandum to the Zoning Board of Appeals from Ann Morgan, Director of Planning & Economic Development and Ted Tetreault, Building Commissioner & Zoning Enforcement Officer; Staff Review: Special Permit Application – 70 Bates Point Road; dated May 25, 2021; 5 pages.

Public Hearing 2d. Variance Application – Lot size dimensional variance to construct a two car garage with living space above at 60 Colonial Road; Bryan Pelletier (Applicant / Owner); Assessor ID 39-A-54.

- Application Packet prepared and submitted by the Owner; received May 3, 2021; including the following:
 - Variance Application form; 5 pages.
 - Certified Abutters List prepared by Town Assessor; dated April 7, 2021; 2 pages.
 - Quitclaim Deed; Worcester District Registry of Deeds Book 58082, Page 354; dated November 22, 2017; 2 pages.
 - Concept Photos; not dated; color; 8 ½ x 11”; 2 pages.
 - Proposed House Plot Plan located at 0 Colonial Road, Assessors map ID 30_A_54_0, Webster, Massachusetts; prepared by Land Planning, Inc.; dated May 5, 2021; black & white; 8 ½ x 11”; 1 page.
 - Correspondence from the Webster Building Commissioner re: Building Permit for Brian Pelletier to construct a single family residence at 0 Colonial Road, Webster, MA; dated September 11, 2019; 1 page.

- Plan of Lots at Colonial Park owned by The Narrows Land Co., Webster, MA; dated November 15, 1924; Worcester District Registry of Deeds Plan Book 61, Plan 31, filed June 25, 1930; 1 page.
- Correspondence from Existing Grade, Inc., Land Surveyors & Civil Engineers, re: Request for Special Permit / Variance – Brief, 0 Colonial Road – Parcel 39-A-54, Webster, Massachusetts; dated May 5, 2021; 1 page.
- Town of Webster Assessor Property Cards, dated December 16, 2020; Locations: 12 Browns Brook Road, 298 Killdeer Road, 61 Point Pleasant Road, 37 Point Pleasant Road, 63 Point Pleasant Road, 271 Killdeer Road, 115 Birch Island Road, 8 Beacon Road, 63 Wakefield Avenue, 18 Pebble Beach Road; 10 pages.
- Town of Webster Assessor Property Cards, dated December 16, 2020; Locations: 32 Point Pleasant Road, 27 Point Pleasant Avenue, 12 Beacon Road, 9 Lakeside Avenue, 35 Point Pleasant Road; 0 Union Point Road; 6 pages.
- Town of Webster Assessor Property Cards, dated December 16, 2020; Locations: 296 Killdeer Road, 109 Birch Island Road, 117 Birch Island Road, 95 Birch Island Road, 25 Beacon Road; 9 pages.
- Town of Webster Assessor Property Card, 60 Colonial Road, dated December 16, 2020, 3 pages.
- Example of Proposed Structure, not dated, color, 8 ½ x 11”, 1 page.
- Site Photos, 0 Colonial Road, Site Visit, dated October 29, 2019; color, 8 ½ x 11”, 3 pages.
- Town of Webster Zoning Board of Appeals, Public Hearing Notice, stamped in by the Town Clerk on May 5, 2021; 1 page.
- Department Comment Form, Fire Department, received May 5, 2021; 1 page.
- Department Comment Form, Water and Sewer Department, received May 6, 2021; 1 page.
- Department Comment Form, Conservation Agent, received May 10, 2021; 1 page.
- Correspondence from Mirick O’Connell, Attorneys at Law, re: Opposition to Variance Request, 60 Colonial Road (formerly known as 0 Colonial Road; dated May 21, 2021; received May 24, 2021; 2 pages.
- Summary of Other Undersized Lots in Lake Residential Zoning, Town of Webster MA – Zoning Board of Appeals Variance Application, Parcel ID: 39-A-54-0, 0 Colonial Road, Webster, MA; submitted by the Applicant Owner; dated May 3, 2021; received May 25, 2021; 2 pages.
- Memorandum to the Zoning Board of Appeals from Ann Morgan, Director of Planning & Economic Development and Ted Tetreault, Building Commissioner & Zoning Enforcement Officer; Staff Review: Variance Application – 60 Colonial Road; dated May 25, 2021; 4 pages